

January 25, 2007

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: Mark Colman
SCI Case # 2006-1420

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that Mark Colman, an attorney and hearing officer at Region 1 in the Bronx, sexually harassed three female Department of Education (“DOE”) employees.¹

This investigation began in April 2006, when a Region 1 Program Director (“Director”) contacted the Office of the Special Commissioner of Investigation for the New York City School District (“SCI”) and reported allegations of sexual harassment and abuse committed by Colman. Colman was a grievance hearing officer in Region 1 who handled “Step 2 hearings” involving DOE employees.² According to the Director, a Region 1 worker (“Employee A”) maintained that Colman made sexual remarks to her and opened her blouse and touched her breasts. Additionally, investigators learned that an Assistant Principal of a DOE school in the Bronx (“Employee B”), and a Teacher

¹ During this investigation, Colman resigned from the DOE.

² Investigators spoke with Michelle Johnson, the Senior Regional Counsel for Regions 1 and 2 who stated that pursuant to the Council of Supervisors and Administrators (“CSA”) contract, a CSA employee who disagreed with unfavorable material in his/her file such as complaints or letters, could file a Step 1 grievance and seek to have the matter addressed informally by his/her immediate supervisor. If the response at Step 1 did not resolve the matter, the grievant may appeal and contact his/her Region to obtain a Step 2 hearing to be conducted by a hearing officer who would revisit the issues.

assigned to a DOE school in the Bronx (“Employee C”) had each filed a complaint against Colman alleging that he engaged in unwanted and inappropriate touching.³

In an interview with investigators, the Director stated that a School Based Administrator (“Administrator A”) reported that Employee A complained to her that she was sexually harassed by Colman. The Director further stated that she spoke with Employee A who told her that Colman pulled her blouse forward and looked at her breasts while commenting that he liked large breasts. The Director disclosed to investigators that she contacted SCI and she advised Employee A to file a complaint with the DOE Office of Equal Opportunity (“OEO”).⁴ The Director added that she also reported the allegations against Colman to his supervisor, Diana Armenakis.⁵

Investigators met with Employee A who provided details about Colman’s conduct. She explained that in April, 2006 she was working alone in a room at the Region 1 office located at One Fordham Plaza in the Bronx when Colman entered the room and closed the door behind him. Employee A stated that she was seated at a table and was dressed in a button down V-neck blouse. According to Employee A, Colman remained standing and began caressing her left shoulder. Employee A continued that Colman then pulled her blouse forward and away from her body while he looked down her blouse and stated that he liked large breasts. Employee A further stated that Colman then backed away towards the door and commented that “if she could give him more, just let him know.” Employee A added that she immediately reported Colman’s inappropriate behavior to her Supervisor (“Supervisor A”).

Employee A also mentioned two prior incidents involving Colman that she described as very uncomfortable and upsetting. According to Employee A, on one occasion while she and Colman were both at the Region 1 office, he put his hand on her side and on another occasion, Colman placed both of his hands on her hips. Employee A further confided to investigators that she feared coming forward to report Colman’s sexual harassment because of his stature within the DOE and her belief that Colman would retaliate against her.

³ SCI Case #2006-1763 involving Employee B and SCI Case #2006-1855 pertaining to Employee C have both been incorporated into this case.

⁴ Investigators spoke with the Human Resources Manager for Regions 1 and 2, Maria Quinones. Quinones told investigators that she was also the OEO representative at the Region 1 office. According to Quinones, she received Employee A’s complaint against Colman in April, 2006 and she forwarded the complaint to Joan Thompson, Director of the DOE’s Office of Equal Opportunity.

⁵ Investigators contacted Armenakis who stated that she was no longer employed by the DOE and she declined to be interviewed by SCI investigators. We note that Armenakis is ineligible for employment with the DOE, in part, as a result of a prior SCI investigation.

Investigators spoke with Supervisor A who related that on the date of the incident, she received a telephone call from Employee A who was very upset. According to Supervisor A, she met with Employee A who informed her that she had been alone in a room with Colman and he placed his hand on her shoulder and then pulled her blouse forward. Supervisor A continued that Employee A complained that Colman proceeded to pull her blouse forward and looked down her blouse stating, "I like big ones, when can I see more?" Supervisor A expressed to investigators that Employee A was "visibly shaken and was crying" and recalled that Employee A said to her "I can't believe this. I was in shock." Supervisor A explained to investigators that she then called Administrator A into the conference room and Employee A repeated the incident with Colman.⁶ Additionally, Supervisor A notified Colman's supervisor, Armenakis, who also interviewed Employee A and took notes. Supervisor A added that Employee A told her that she was unable to say or do anything prior to Colman exiting the room.

In an interview with investigators, OEO Director Joan Thompson stated that she was aware of the complaint against Colman that was made by Employee A. Thompson revealed that she spoke with Armenakis and took notes of the conversation during which Armenakis informed her that Colman confirmed Employee A's allegations against him.⁷ Thompson further related to investigators that her office had one prior sexual harassment claim against Colman. According to Thompson, a female DOE employee alleged that she was sexually harassed by Colman in that he stroked her arm and told her that he could find her a job. Thompson continued that the case was closed with a "final warning" letter indicating that any further transgressions by Colman would result in the termination of his employment. Thompson added that a second complaint had been made against Colman by Employee B.

Investigators met with Employee B regarding her allegations that Colman engaged in harassing and inappropriate behavior. During the interview, SCI investigators learned that Colman had improperly touched her, had asked her personal questions, and had offered her a better position within the DOE. Employee B explained that she was assigned as an Assistant Principal in the Bronx and in March, 2006 she testified at a hearing at the school.⁸ According to Employee B, also present at the hearing was the

⁶ Administrator A told investigators that when she entered the room she observed that Employee A was crying. Administrator A further stated that Employee A explained that Colman entered the room while he was talking on his cell phone and he pulled her blouse forward while looking down her shirt and stating that he "liked big ones." Administrator A added that she went with Employee A and Supervisor A to Armenakis' office wherein Employee A recounted her incident with Colman.

⁷ Thompson provided the notes of her conversation with Armenakis to investigators. In Thompson's notes it states that in April, 2006 she spoke with Armenakis who told her that she "spoke to respondent Colman and he confirmed the complainant's story."

⁸ Investigators learned that Employee B was the subject of a corporal punishment allegation that she pushed through a group of students and caused them to fall upon another teacher who also then fell to the ground. It was further maintained that she interfered with the investigation by asking teachers to write letters on her behalf. The allegations against her were substantiated at a Step 1 hearing and as a result, Employee B sought a Step 2 hearing with a hearing officer from the Region.

principal of her school, Employee B's union representative from the Council of Supervisors and Administrators ("CSA") Raymond Gregory, and the hearing officer, Colman. At the conclusion of the hearing, Employee B stated that she exited the room and Colman was "right behind her" when she felt him "place his hand firmly on her left side hip near her waist." Employee B complained to investigators that she was upset and confused by his touch. Employee B continued that she and Gregory both returned to her office and moments later, Colman appeared at her office and stated, "show me the scene of the crime." Employee B, Gregory, and Colman walked into the hallway and Colman proceeded to ask her questions, however, Gregory intervened and informed Colman that he should not ask any more questions and they should immediately leave together. Employee B reported that Gregory and Colman walked away and she returned to her office. Employee B added that two teachers were also present in their offices which were located inside the same room which housed her office.⁹

Approximately ten minutes later, Colman returned to her office, closed the door behind him, and sat down in a chair in front of her desk. According to Employee B, Colman's demeanor was "much friendlier" now than during the hearing. Employee B reported to investigators that Colman expressed to her that he thought she was the "most honest" and explained to her that he was undecided regarding the outcome of his investigation. Employee B recalled that Colman asked her personal questions about her marriage, her husband's line of work, and about a colleague at her school. Employee B further stated that Colman asked her what position she would desire within the DOE to which Employee B replied that she wanted to be a principal in an early childhood school. Employee B related to investigators that Colman told her that he could speak with the Local Instructional Superintendent ("LIS"), Keith Oswald, about obtaining her an assistant principal's position in an early childhood school.

Colman concluded the conversation by informing Employee B that his report would be sent to the superintendent or the LIS and that someone would contact her with the outcome. Employee B explained that both she and Colman arose from their seats and as she exited from behind her desk Colman held her scarf as the back of his hand rested upon her chest in the area above her breast. Employee B told investigators that she was in shock, repeatedly shook her head from side to side and exclaimed, "what?" Employee B continued that they exited her office and the room and Colman went to the stairwell.

⁹ Employee B told investigators that although she shared the room with the two teachers, they probably could not see or hear what happened in her office because her window was covered and her door was closed so voices could not be heard. In an interview with investigators, both teachers stated that they did not recall seeing an unidentified adult male exit Employee B's office, nor did they witness any inappropriate touching by any male upon Employee B. The teachers further stated that Employee B never complained to them about any inappropriate comments or touching.

Employee B revealed that she immediately told her mentor about what had transpired and the mentor instructed Employee B to report the matter to Gregory, which she did.¹⁰ Employee B added that she believed that Colman had the “authority, control, and influence” to determine the outcome of the hearing as well as the direction of her career.¹¹

Investigators met with Employee C who provided additional details about Colman’s inappropriate conduct toward her. Employee C disclosed that she first met Colman in November 2005 at the Zerega Avenue Learning Center when she was introduced to him by her union representative, Phyllis Williams. Employee C told investigators that Colman stated to her “you seem like a nice lady” and then he exited the room.

Employee C explained that prior to her hearing in December, 2005, Colman approached her and claimed that he knew the persons who were making the complaint against her and that those persons “should be fired.”¹² Employee C told investigators that Colman was assigned as her hearing officer and noted that at the conclusion of the hearing Colman approached her again and reiterated his prior claims against her accusers. Employee C further stated that Colman claimed that he would speak with Region 2 LIS Dov Rokeach about dropping the charges against her. Employee C continued that Colman asked for her telephone number so that he could “keep her posted” and Employee C complied with his request. Employee C confided to investigators that she believed that Colman had the ability to meet with Rokeach and assist her favorably in the case. Employee C also explained that she believed that Colman was the person responsible for reaching a decision “for or against her” at her hearing.

Employee C further reported to investigators that five days after her hearing date, Colman called her residence and informed her that he was meeting with Rokeach in an attempt to negotiate a settlement of six months probation and professional development

¹⁰ Investigators spoke with the mentor who confirmed that she had received a telephone call from Employee B wherein Employee B told her about her meeting with Colman and his return to her office. The mentor, however, maintained that Employee B did not complain to her about any sexual misconduct by Colman. Moreover, Gregory told investigators that Employee B had sent him an e-mail stating that Colman returned to her office after the hearing and told her that he was going to write a report but that he was not sure of what he would say. Gregory continued that Employee B further stated in her e-mail that Colman proceeded to ask her personal questions regarding what her husband did for a living and he claimed that he might be able to get her a position as an assistant principal in an early childhood school.

¹¹ Investigators learned that Employee B was discontinued as an assistant principal and was demoted to a teacher’s position following the hearing conducted by Colman. According to Regional Counsel Johnson, Colman did not have the final say regarding employees’ careers and did not make the final decision with respect to Employee B.

¹² Employee C sought a Step 2 hearing because she “grieved” two letters that were placed in her file by her principal. One letter was for unprofessional conduct because Employee C yelled at students and parents. Another letter was because she mistreated a school aide.

which would enable her to keep her position. According to Employee C, Colman once again expressed his belief that the accusations against her were unfair. Employee C stated that Colman told her that he was attending a meeting in her neighborhood the following day and explained that he would come to her residence and tell her the results of his conversation with Rokeach.¹³ Employee C added that she also received a voice mail message from Colman that evening.¹⁴

Employee C stated that the following day, as she was parking her car near her residence she observed Colman seated in the driver's seat of a beige automobile that was double parked in front of her building. Employee C informed investigators that she approached Colman and asked him about her case. Employee C recalled that Colman said, "let's go inside to talk about it privately." Employee C disclosed that she agreed and Colman parked his vehicle. Employee C explained to investigators that she and Colman engaged in a "general conversation" and when they entered her apartment she introduced Colman to her father. According to Employee C, they entered her kitchen and she sat "catty-corner" at the table with Colman. Employee C stated that Colman told her that he was unable to convince Rokeach to reconsider her discontinuance. Employee C further stated that Colman was rubbing her knee with an open hand which made her angry and upset.¹⁵ Employee C explained that she sternly stated "stop" and Colman responded by stating "try to understand, I am trying to help." Employee C added that Colman further stated "there is nothing much I can do." Employee C recalled that she escorted Colman out of her apartment and into the lobby and as Colman was walking behind her he began stroking her hair. Employee C reported that she promptly knocked Colman's hand away and stated, "please don't do that" and Colman responded, "I like your hair." Employee C continued that she walked with Colman to the street and observed him get into his car and drive away. Employee C added that when she returned to her apartment she opened her mail and read a "Step 2" letter which revealed that the outcome of the hearing was not in her favor.

Employee C stated that in January, 2006, she attended another hearing at the Zerega Avenue location in which Colman was the hearing officer. Employee C revealed that she confided to her union representative, Phyllis Williams, about Colman's inappropriate behavior and at the direction of Williams, she contacted CSA representative

¹³ Employee C informed investigators that she never provided Colman with her home address but that she assumed that he was able to get her contact information from documents included at the hearing or from his access to DOE databases.

¹⁴ Investigators retrieved from Employee C's telephone voice mail system the message left by Colman to Employee C five days after her hearing date in which he left his cellular phone number and asked her to call him back. The following day, Employee C received another phone call from Colman although he did not leave a message.

¹⁵ Employee C told investigators that she was wearing a long skirt which covered her knees.

Robert Reich. Employee C continued that she informed Reich about Colman's misconduct and then Reich conferred with Williams regarding the matter. According to Employee C, Williams asked Colman to exclude himself from the hearing and when Colman inquired as to the reason he should not participate in the hearing, Williams refused to answer him. Employee C explained to investigators that she felt that Colman would be unfair at the hearing because she had rebuffed his advances and because he was aware that she had spoken to Williams about his behavior. Employee C informed investigators that Colman's demeanor changed during the hearing and he was very quiet. Employee C further stated that after the hearing, Williams revealed to her that she had a conversation with Colman who indicated that he was going to speak with two principals about placing Employee C in their schools. Employee C recounted that Williams told her that Colman stated that if he could get Employee C into one of these schools, there would be no need to discontinue her. Employee C expressed to investigators that she believed that Colman was trying to cover up his mistakes. Employee C added that she was subsequently contacted by two principals from schools in the Bronx who told her that Colman asked them to call her. Employee C added that she did not get a position at either school.

Investigators interviewed Williams who stated that in early January 2006, she represented Employee C at a hearing at the Zerega Avenue office in which Colman was the hearing officer. According to Williams, when she and Employee C entered the hearing room, Employee C became visibly upset and exclaimed, "I don't want him in the room with me." Williams recounted that she asked Employee C to explain the reason why she did not want to be near Colman and Employee C repeated her account of what had occurred in her home. Williams told investigators that after speaking with Employee C, she contacted her supervisor, Robert Reich, who instructed her to ask Colman to recuse himself from the hearing.¹⁶ Williams stated that she asked Colman three times to recuse himself, but he refused. Colman did, however, place Williams' request on the record. Williams added that during the hearing, Colman appeared to conduct himself in an impartial manner.

Through his attorney, Mark Colman declined the opportunity to speak with investigators from this office.

Mark Colman's continual inappropriate conduct makes it clear that he should be barred from working within any DOE facilities. It is therefore the recommendation of this office that, although he is no longer a DOE employee, Mark Colman be placed on the ineligible list and that this matter be considered should he apply for any position with the DOE or with one of its vendors in the future.

¹⁶ Investigators spoke with Reich who stated that on the date of Employee C's hearing he received a telephone call from Williams who informed him of Employee C's allegations against Colman. Reich explained that he told Williams to ask Colman to recuse himself and if he refused, she should place her request on the record.

We are referring our findings to Bronx District Attorney Robert T. Johnson for whatever action he deems appropriate.

It is also the recommendation of this office that the employment decisions made concerning Employee B and Employee C, following hearings held by Colman, be reviewed by an independent authority to determine the propriety of the findings.

We are forwarding a copy of this letter to the Office of Legal Services. In addition, we are referring this matter to the Disciplinary Committee of the New York Supreme Court, Appellate Division, First Department, and to the Ethics Commission of the New York State Unified Court System. Should you have any inquiries regarding the above, please contact Special Counsel Valerie A. Batista, the attorney assigned to the case. She can be reached at (212) 510-1417. Please notify Ms. Batista within thirty days of the receipt of this letter as to what, if any, action has been taken or is contemplated regarding Mark Colman. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____

Regina A. Loughran
First Deputy Commissioner

RJC:RAL:VAB:gm

c: Michael Best, Esq.
Theresa Europe, Esq.